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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment Of Rules Governing Procedures)
To Be Followed When Formal Complaints Are)
Filed Against Common Carriers)

CC Docket No. 96-238
DA 97-2178

COMMENTS OF AT&T CORP.

Pursuant to the Public Notice released December 12, 1997,¹ AT&T Corp.

("AT&T") submits these comments concerning the Competition Task Force's ("Task Force") proposal to create an "accelerated docket" for complaint proceedings. Among other significant changes, the Task Force proposes to create a "hearing-type process" or "minitrial" to handle accelerated complaint proceedings, to "cover a broader range of issues" than hearings the Common Carrier Bureau ("Bureau") is otherwise authorized to designate for hearing before an ALJ.²

AT&T strongly supports the Task Force's efforts to create a procedural framework to permit enforcement of key provisions of the 1996 Act in the most expeditious

¹ Public Notice, Common Carrier Bureau Seeks Comment Regarding Accelerated Docket For Complaint Proceedings, CC Docket No. 96-238, DA 97-2178, released December 12, 1997 ("Notice").

² Id., p. 3.

manner possible. Swift and effective resolution of complaints concerning carriers' alleged failures to satisfy their obligations under that statute is essential to the development of local exchange competition.

The proposed "accelerated docket" will be most effective if it is focused on issues relating to local exchange market entry, such as matters arising under Sections 251 and 271. The Notice seeks comment on whether an accelerated docket "should be limited to issues of competition in the provision of telecommunications services."³ That criterion likely would prove unworkable, however, as virtually any dispute brought by one telecommunications entity against another (as most formal complaints against common carriers are) could be characterized as implicating "competition." If the Task Force employed such a broad definition of cases eligible for "acceleration," almost every complainant would seek to fit its case within that designation so as to gain rapid resolution of its dispute, placing an unreasonable burden on carriers forced to defend against claims that do not in fact merit expedited treatment.

AT&T has two specific suggestions as to how the proposed accelerated docket should fit within the Commission's newly enacted complaint rules.⁴ First, AT&T believes that any discussions with the Commission staff prior to the filing of a complaint would not implicate the

³ Id., p. 2.

⁴ See Report and Order, Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238, FCC 97-396, released November 25, 1997 ("Complaint Order").

ex parte rules.⁵ Indeed, mandatory disclosure of pre-filing contacts with the Commission staff could chill full and frank discussion of potential complaints.

Second, while the Notice's proposal to obviate discovery disputes by requiring some form of mandatory disclosure could help to expedite handling of accelerated matters, the Task Force should recognize that parties' concerns (whether actual or feigned) over safeguarding proprietary information can also introduce substantial delays. AT&T therefore proposes that parties presumptively must rely upon the confidentiality provisions of 47 C.F.R. § 1.731.⁶ Litigants could seek alternative nondisclosure provisions in extraordinary situations, but the Commission staff should be prepared very promptly to resolve any disputes about the language of such confidentiality agreements.

AT&T urges the Task Force promptly to issue an NPRM outlining specific proposals for procedures to govern an accelerated docket for complaints raising issues concerning local exchange competition, and to issue an order establishing such a docket forthwith. Even prior to the creation of a distinct "accelerated docket," however, the new complaint rules grant the Commission's staff sufficient flexibility and authority to expedite complaint proceedings. By design, the rules permit the Bureau "considerable discretion" to adapt procedures so as to ensure

⁵ See Notice, p. 4; see generally AT&T Corp. Comments On Petitions For Reconsideration, filed May 30, 1997, at pp. 3-4, in Report and Order, Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, FCC 97-92, released March 19, 1997.

⁶ In adopting Rule 1.731, the Commission found that its provisions "offer[] fully adequate protection in the vast majority of cases." 8 FCC Rcd 2614, 2622 (April 2, 1993).

"the full and fair resolution of disputes in the most expeditious manner possible."⁷ Thus, the Commission's staff plainly has the power and the expertise to "accelerate" individual complaint proceedings where circumstances warrant. Indeed, even under the existing rules staff members routinely take steps such as limiting the number of interrogatories, setting short time cycles for briefing, and ordering parties to admit or deny certain facts. The new complaint rules also expand the staff's authority to refer matters to an ALJ for fact-finding, expressly allowing hearings even in cases that present novel factual issues.⁸ Pending the adoption of a distinct "accelerated docket," the Common Carrier Bureau can and should seek on a case-by-case basis to accelerate matters relating to local exchange competition, using the full panoply of procedural devices at its disposal.

⁷ Id., ¶ 5.

⁸ See Complaint Order, ¶ 135. The only questions which could not be delegated to an ALJ under the new complaint rules are novel issues of law. In all events, the ability to conduct hearings before an ALJ on legal questions would be of questionable value.

CONCLUSION

The Commission should issue a Notice of Proposed Rulemaking regarding the proposed "accelerated docket" forthwith.

Respectfully submitted,

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